



## Games of Skill vs Games of Chance

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### 1. INTRODUCTION

- 1.1 "Since you have challenged me," he said, "I will not withdraw. This is my established vow. We are all under the control of destiny. Who in this assembly shall be my opponent? Who will match their skill against mine? Let the play begin." Even though it does sound like one, this dialogue is not an invitation for a wrestling match. This is, in fact, a translated couplet from the Indian epic, *Mahabharata*. This particular couplet is what *Yudhishthira*, the eldest son of the *Pandava* clan, says to *Duryodhana*, the eldest son of the *Kuru* clan, upon being challenged to a game of *Chausar*, a game we know today as the Indian Ludo. Why the drama, you ask? It is because the game that he was challenged to involved placing a bet on each move made by the players, and as such, could potentially have been catastrophic for either side. Unfortunately, having been out-skilled by *Shakuni*, the prince of *Gandhara*, *Yudhishthira* lost all his bets, and consequently, his kingdom.
- 1.2 What the preceding paragraph demonstrates is the Indian penchant for gaming (and dare we say, gambling) that has predated the modern boom in gaming by at least 2,000 years, if not more. At present, research suggests that the Indian gaming industry has attracted over US\$300 million as investment and generated over ₹7,700 crore as revenue in the period between 2014 and 2020. Research also suggests that, as of summer 2020, the number of online gamers in India had reached approximately 400 million, with most users playing from Mumbai, Delhi, Kolkata, Chennai, Bengaluru and Hyderabad<sup>1</sup>. This has, of course, been possible due to the proliferation of mobile internet in India coupled with higher disposable incomes, better 4G speeds and more affordable phones, enabling people to access these games online. With a mobile internet penetration of approximately 45 per cent. and a mobile gaming penetration of just about 8 per cent., this industry is poised for a "big-bang" increase in the coming years.
- 1.3 In order to fully utilise its vast potential, the Indian gaming industry, especially the newly surgent online gaming industry, unfortunately needs to wade some uncertain legal waters. Gaming and gambling have had a bad reputation in India. Historically low disposable incomes have meant that most people who took part in any gambling activity (such as lotteries), ended up close to ruin. Consequently, the Indian polity has tried its hardest to stamp such games out of existence. It is

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<sup>1</sup> <https://www.sevenjackpots.com/biggest-online-gambling-states-in-india/>

only recently that we see some changes being ferried in through the usage of internet as well as court activism. Therefore, we have, through this paper, tried to provide a brief background and history of the various legal turns that the story of gaming and gambling have taken in India, whilst also trying to provide a comprehensive list of states where wagers on games are permitted, licensed or prohibited.

## 2. LEGALITY OF ONLINE GAMBLING / GAMING

2.1 Gambling in India is governed by the Public Gambling Act, 1867 (the **Gambling Act**). Whilst the Gambling Act applies to all states in India, certain states have made state specific amendments to the Gambling Act that also governs gambling in those states (such legislation, the **Gambling Legislation**).

2.2 Gambling, under most of the Gambling Legislations, is defined as the act of wagering or betting for money. Consequently, only games that involve the placing of a wager or bet are subject to the Gambling Legislation. Most of the new-age online games that have recently sprung up involve some amount of betting or wagering. Accordingly, it is important that such games understand the legal contours of the gaming industry in India.

2.3 The Gambling Act seeks "to provide for the punishment of public gambling and the keeping of common gaming houses". A common gaming house is defined under the Gambling Act as:

*"any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place or otherwise howsoever."*

2.4 As is evident from the above, the Gambling Act has been drafted specifically with physical enclosures in mind and has not been amended to classify the internet, the telephone or a mobile phone as a "common gaming house". The internet does not lend itself easily to the definition of a common gaming house under the Gambling Act as the definition contemplates an enclosure with physical boundaries. Even if it was, it is unclear whether computers or an online portal can be considered as "instruments of gaming".

2.5 Whilst the Supreme Court of India and the High Court of Delhi have considered whether online Rummy and Poker, respectively, fall within the purview of the Gambling Act, a final determination on this issue has not been reached. The Supreme Court of India considered this question in the case of *Mahalakshmi Cultural Association v. The Director, Inspector General of Police and Ors.*<sup>2</sup> (the **Mahalakshmi Case**), while determining whether Rummy was to be included as a game of skill or a game of chance within the ambit of the Gambling Act. However, since the Tamil Nadu government stated that they had not decided if the state specific Gambling Act would apply to online games, the Supreme Court did not proceed with its determination of that question.

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<sup>2</sup> Special Leave to Appeal (C) No(s).15371/2012 (Arising out of impugned final judgment and order dated 22/03/2012 in WA No. 2287/2011 passed by the High Court of Madras).

- 2.6 Similarly, the Delhi High Court considered this question in 2015 when Gaussian Networks Private Limited<sup>3</sup> made a reference to seek the court's opinion with respect to various issues pertaining to online gaming portals with one question being the applicability of the Gambling Act to online games. However, the reference was withdrawn before the court could provide its determination and accordingly, the question remained unresolved.
- 2.7 There appears to be no definitive judicial determination in India of whether online gaming portals are deemed to be included within the ambit of a "common gaming house" under the Gambling Act. The Gambling Act or the Gambling Legislation will need to be amended to specifically include online gaming portals. Certain states, such as Sikkim, Nagaland, Meghalaya (which regulate online games by providing licenses), and Andhra Pradesh, Kerala and Telangana (which ban online games to varying degrees) have, in fact, amended Gambling Legislations within their jurisdictions to specifically include online portals (with some states such as Karnataka and Kerala being instructed by their respective High Courts to decide the fate of online gaming portals).

### 3. CATEGORY 1: GAMES OF SKILL VERSUS GAMES OF CHANCE

- 3.1 As discussed above, whilst as drafted, most Gambling Legislations do not appear to include online gaming portals within the ambit of "common gaming houses", it is possible that more states (in addition to the states specified in paragraph 2.7) adopt the approach of amending the language to include online portals or a future Supreme Court interprets such term to include online portals. In either case, assuming that online gaming portals are included within the ambit of "common gaming houses" and thus subject to the Gambling Act, the next relevant question will be to assess whether the new-ages online games are games of "mere skill" or chance.
- 3.2 The Gambling Act generally prohibits all gaming activities that are not classified as "games of skill". Section 12 of the Gambling Act excludes the applicability of the prohibitions in the Gambling Act to any "game of mere skill" and this exemption has been adopted by states such as Delhi<sup>4</sup> and Maharashtra<sup>5</sup>. Certain states, such as West Bengal specifically exclude games such as Rummy and Poker from the applicability of the specific Gambling Legislation<sup>6</sup>, whilst certain other states such as Sikkim and Nagaland permit the playing of Rummy and Poker upon obtaining requisite licences.
- 3.3 However, it is important to note that certain states, such as Andhra Pradesh<sup>7</sup>, Assam<sup>8</sup>, Odisha<sup>9</sup> and Telangana<sup>10</sup> have repealed the exclusion for "games of skill" and accordingly, wagering on a game, even if considered as a "game of skill", will, in theory, not be permitted in such states.
- 3.4 In *K. R. Lakshmanan v. State of Tamil Nadu*<sup>11</sup> (the **Lakshmanan Case**), the Supreme Court interpreted "a game of mere skill" to mean "mainly and preponderantly a game of skill". The court also held that since gaming is the act or practice of gambling on a game of chance, it would mean wagering or

<sup>3</sup> *Gaussian Networks Private Limited v. Monica Lakhanpal and State of NCT*, Suit No. 32/2012, Delhi District Court.

<sup>4</sup> Section 13, Delhi Public Gambling Act, 1955.

<sup>5</sup> Section 13, Bombay Prevention of Gambling Act, 1887.

<sup>6</sup> Section 2(1)(b), The West Bengal Gambling and Prize Competitions Act, 1957.

<sup>7</sup> The Andhra Pradesh Gaming (Amendment) Ordinance, 2020 on 23 September 2020.

<sup>8</sup> The Assam Game and Betting Act, 1970.

<sup>9</sup> Section 2(b), The Orissa (Prevention of) Gambling Act, 1955.

<sup>10</sup> Telangana Gaming (Amendment) Act, 2017.

<sup>11</sup> AIR 1996 SC 1153.

betting on games of chance, as opposed to games of skill. The court concluded that competitions where success depends on a substantial degree of skill are not equivalent to gambling. This case concerned horse racing and the court held that horse racing was a game of skill.

3.5 Based on the reasoning provided by the Supreme Court in the Lakshmanan Case, certain states' High Courts, such as those of Karnataka and Kolkata have held Poker to be a game of skill. However, a recent judgment of the High Court of Gujarat in *Dominance Games Private Limited v. the State of Gujarat and Others*<sup>12</sup> (the **Dominance Case**) stated that Poker is to be considered a game of chance in the state of Gujarat. Thus, the position on whether Poker (and accordingly, any such game) is a game of skill or a game of chance is still a grey area and the answer depends on the state in which such game is played.

#### 4. CATEGORY 2: GAMES OF SKILL WITH STAKES

4.1 Whilst most states generally exempt games of skill from the ambit of Gambling Legislation, in some states even a game of skill may be considered illegal if a stake or bet forms part of such game. For example, the High Court of Kerala recently directed the state government to act against online Rummy games and the state government immediately amended Kerala's Gambling Legislation<sup>13</sup>, through an executive notification, to prohibit online Rummy when played for stakes or bets. The state of Tamil Nadu recently brought in an ordinance amending Tamil Nadu's Gambling Legislation<sup>14</sup> to prohibit online games (even if they be games of skill) when played for stakes or bets and the state of Arunachal Pradesh, whilst permitting games of mere skill, does not permit the playing of such games for money<sup>15</sup>. This ordinance was challenged in Tamil Nadu's High Court which eventually, and dare we say thankfully, struck such ordinance down<sup>16</sup>.

4.2 The High Court of Gujarat on the other hand specified in the Dominance Case that if a stake is an inseparable part of a game, then the existence of the stake militates against the game being considered to be a game of skill. Accordingly, the fact of the existence of a stake will need to be considered. The Dominance Case is subject to an appeal before a division bench of the High Court of Gujarat.

4.3 Even though the Supreme Court had the opportunity to consider the above situation in the Mahalakshmi Case, given that they could not proceed on the matters relating to the Gambling Legislation, the court could not reach a final determination. Accordingly, the position on whether a game of skill continues to enjoy an exemption where it is combined with a stake or bet remains a grey area with the answer dependant on the state in which such game is played.

#### 5. CATEGORY 3: LICENSING OF ONLINE GAMES

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<sup>12</sup> (2018)1GLR801.

<sup>13</sup> Notification number G.O.(P) No. 26/2021/HOME dated 23 February 2021.

<sup>14</sup> Tamil Nadu Gaming and Police Laws (Amendment) Ordinance 2020 on 20 November 2020 (Tamil Nadu Ordinance Number 11 of 2020).

<sup>15</sup> Section 13, The Arunachal Pradesh Public Gambling (Prohibition) Act, 2012.

<sup>16</sup> <https://www.thehindu.com/news/national/tamil-nadu/court-strikes-down-tn-law-banning-online-games-with-stakes/article35697113.ece>.

5.1 States such as Sikkim<sup>17</sup>, Nagaland<sup>18</sup> and Meghalaya<sup>19</sup> have chosen to regulate gambling and forms of online gaming instead of outlawing them. These states provide a licence regime where portals are permitted to provide access to their games within the jurisdiction of these states if they have obtained a licence to provide such access. The licence could, in some instances such as in the state of Sikkim, include even casino games like roulette and blackjack played on the intranet, or include games of skill in the state of Nagaland.

## 6. CONCLUSION

6.1 In order to determine the legality of any game, especially when played for real money, a determination of whether such game will contravene any applicable Gambling Legislations will need to be made. Given that most online games are played with real money, it is important to determine whether the Game is a game of skill or game of chance (since games of chance when played for real money are prohibited across the country). As discussed in paragraph 3.4 above, the Supreme Court has interpreted “games of skill” to mean such games which require a preponderance of skill, or where the success largely depends on the skill of the player. It does not then matter that such games have an element of chance involved as well – so long as the success is largely dependent on the skill of the player.

6.2 Once a determination of whether a game is a game of skill or a game of chance has been made, it is important to understand which states such a game will be permitted in. Based on the analysis provided above, we believe that such games are likely to be allowed in most states (such as Delhi, Maharashtra, Karnataka, Punjab and West Bengal). However, they will not be permitted in the following states for a variety of reasons.

S. No.	State	Status
1.	Andhra Pradesh	Games which involve stake or bet not permitted, irrespective of such games being games of skill
2.	Arunachal Pradesh	Games which involve stake or bet not permitted, irrespective of such games being games of skill
3.	Assam	Games which involve stake or bet not permitted, irrespective of such games being games of skill
4.	Kerala	Games which involve stake or bet not permitted, irrespective of such games being games of skill

<sup>17</sup> Sikkim Online Gaming (Regulation) Act, 2008.

<sup>18</sup> Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016.

<sup>19</sup> Meghalaya Regulation of Gaming Act, 2021.

5.	Meghalaya	Requisite license is required
6.	Nagaland	Requisite license is required
7.	Odisha	Games which involve stake or bet not permitted, irrespective of such games being games of skill
8.	Sikkim	Requisite license is required
9.	Telangana	Games which involve stake or bet not permitted, irrespective of such games being games of skill

6.3 Further, there is a possibility, depending on the outcome of the appeal in the Dominance Case, that the state of Gujarat may be added to such list. In addition, the state government of the state of Karnataka introduced a bill in the state legislature to ban online games of all forms<sup>20</sup>. Whilst not a law yet, it is likely that such bill will pass through the state legislature, and accordingly, the above list may need to be updated to reflect Karnataka as well. Whilst the most prominent “problem” states have been captured in paragraph 6.2 above, we have provided a complete list of states with what treatment each such state will mete out to online games in Schedule I.

6.4 As is evident from what has been discussed above, the Indian legal landscape in respect of online gaming is confusing, inconsistent and certainly not helpful for the growth of an otherwise vibrant industry. In order for such an industry to prosper in the country, we will need to ensure that a robust, modern and consistent legal framework is developed across the country which the gaming industry can then comply with.

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<sup>20</sup> <https://theprint.in/india/online-gambling-ban-bill-tabled-in-karnataka-govt-says-want-to-wean-citizens-from-vice/735639/>

## **SCHEDULE I**

### STATE-WISE ANALYSIS

The following table attempts to provide a snapshot of the treatment various states mete out to games of skill and games which involve money. We have reviewed copies of legislation and case law that are accessible online to prepare the following table, and have not conducted a physical search at the offices of the state governments and/or union territories. Not all states make their updated legislations available or accessible online and sometimes such documents may be accessible only at the local office and in a vernacular language. Accordingly, it is possible that some state specific amendments, if any, have not been captured in the table below due to such amendments not being accessible on the internet. We have been unable to locate the state specific legislations (or state specific amendments, if any, of the Gambling Act) of certain states and union territories, and as such, such states and union territories have not been listed below.

S. No.	State or Union Territory	Legislation or Ordinance	Status
1.	Andaman and Nicobar Islands	The Andaman and Nicobar Islands Public Gambling Act, 1951	Games of skill are permitted
2.	Andhra Pradesh	The Andhra Pradesh Gaming (Amendment) Ordinance, 2020 on 23 September 2020	Games which involve stake or bet not permitted, irrespective of such games being games of skill
3.	Arunachal Pradesh	Arunachal Pradesh Public Gambling (Prohibition) Act, 2012.	Games which involve stake or bet not permitted, irrespective of such games being games of skill
4.	Assam	The Assam Game and Betting Act, 1970.	Games which involve stake or bet not permitted, irrespective of such games being games of skill
5.	Bihar	Public Gambling Act, 1867	Games of skill are permitted

6.	Dadra and Nagar Haveli	Bombay Prevention of Gambling Act, 1887  The central government has extended the Bombay Prevention of Gambling Act, 1887 to Dadra and Nagar Haveli by way of notification no. S.O. 99 (E).	Games of skill are permitted
7.	Daman and Diu	The Goa, Daman and Diu Public Gambling Act, 1976	Games of skill are permitted
8.	Goa	The Goa, Daman and Diu Public Gambling Act, 1976	Games of skill are permitted
9.	Gujarat	Bombay Prevention of Gambling (Gujarat Amendment) Act, 1964	The High Court has stopped short of mandating that all games, when played for a stake, will be considered to be gambling, but suggested that the existence of a stake militates against the game being considered to be a game of skill. This judgment of the High Court is currently under appeal. We will need to monitor the position in this state on a regular basis.
10.	Himachal Pradesh	Public Gambling Act, 1867	Games of skill are permitted
11.	Karnataka	Karnataka Police Act, 1963	Games of skill are permitted
12.	Kerala	Kerala Gaming Act, 1960	Games which involve stake or bet not permitted, irrespective of such games being games of skill
13.	Maharashtra	Bombay Prevention of Gambling Act, 1887	Games of skill are permitted
14.	Meghalaya	Meghalaya Regulation of Gaming Act, 2021	Requisite license is required
15.	Mizoram	The Public Gambling (Extension to Mizo District) Act, 1962	Games of skill are permitted

16.	Nagaland	Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016	Requisite license is required
17.	National Capital Territory of Delhi	Delhi Public Gambling Act, 1955	Games of skill are permitted
18.	Odisha	Orissa (Prevention of) Gambling Act, 1955	Games which involve stake or bet not permitted, irrespective of such games being games of skill
19.	Puducherry	Puducherry Gaming Act, 1965	Games of skill are permitted
20.	Punjab	Public Gambling Act, 1867	Games of skill are permitted
21.	Rajasthan	Rajasthan Public Gambling Ordinance, 1949	Games of skill are permitted
22.	Sikkim	Sikkim Online Gaming (Regulation) Act, 2008	Requisite license is required
23.	Tamil Nadu	Tamil Nadu Gaming Act, 1930	Games of skill are permitted
24.	Telangana	Telangana Gaming (Amendment) Act, 2017	Games which involve stake or bet not permitted, irrespective of such games being games of skill
25.	Tripura	Tripura Gambling Act, 1926	Games of skill are permitted
28.	West Bengal	The West Bengal Gambling and Prize Competitions Act, 1957	Games of skill are permitted